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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 JUSTIN EDWARD LEWIS,

8 Plaintiff,

9 v.

10 GINA PENROSE, and
11 DELMAR BICE,

12 Defendants.

NO: 4:18-CV-5153-TOR

ORDER OF DISMISSAL

13 BEFORE THE COURT is the Defendants' Motion to Dismiss (ECF No.10).

14 This matter was heard without oral argument. The Court has reviewed the record
15 and files herein, and is fully informed. For the reasons discussed below, the
16 Defendants' Motion to Dismiss (ECF No. 10) is **GRANTED**.

17 **BACKGROUND**

18 This case was originally filed by plaintiff in Franklin County Superior Court.
19 ECF No. 1-3. Defendants removed it to this court on September 12, 2018 based on
20 Plaintiff's supposed claim under 42 U.S.C. § 1983 for an express reference to an

1 Eighth Amendment violation. ECF No. 1. Defendants filed an Answer to the
2 Complaint (ECF No. 2) and the Court entered a Jury Trial Scheduling Order (ECF
3 No. 9) setting this matter for trial on June 24, 2019. The deadline for amending
4 pleadings and adding parties expired on December 30, 2018, and the deadline for
5 filing dispositive motions was March 25, 2019. *Id.* On May 17, 2019, the Court
6 suspended all remaining unexpired deadlines, hearings and the trial, pending
7 resolution of the Defendants' Motion to Dismiss. ECF No. 16.

8 Defendants timely moved for judgment on the pleadings claiming Plaintiff
9 has not alleged any claim against Defendant Penrose and alleges no facts that
10 would support a claim against Defendant Bice. ECF No. 10. The required notice
11 to pro se prisoner plaintiffs was provided to Plaintiff in this case. ECF Nos. 11, 13
12 (*Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) notice).

13 Plaintiff has filed no opposition to the motion to dismiss despite the *Rand*
14 notice and Local Civil Rule 7(e) which provides that "the failure to comply with
15 the requirements of LCivR 7(b) or (c) [regarding the filing of an opposition] may
16 be deemed consent to the entry of an order adverse to the party who violates these
17 rules."

18 Plaintiff lists Defendant Gina Penrose in the caption and in the list of
19 defendants but neglects to include any factual allegation about her whatsoever.
20 ECF No. 1-3. Plaintiff alleges no facts that would support a claim against

1 Defendant Bice. Plaintiff’s complaint is the epitome of a bare bones complaint
2 without any substantive allegations.

3 DISCUSSION

4 A. Standard of Review

5 “After the pleadings are closed—but early enough not to delay trial—a party
6 may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). In reviewing a
7 Rule 12(c) motion, the court “must accept all factual allegations in the complaint
8 as true and construe them in the light most favorable to the non-moving party.”
9 *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). “A judgment on the
10 pleadings is properly granted when, taking all the allegations in the non-moving
11 party’s pleadings as true, the moving party is entitled to judgment as a matter of
12 law.” *Marshall Naify Revocable Trust v. United States*, 672 F.3d 620, 623 (9th
13 Cir. 2012) (quoting *Fajardo v. Cnty. of L.A.*, 179 F.3d 698, 699 (9th Cir. 1999)).
14 “Analysis under Rule 12(c) is ‘substantially identical’ to analysis under Rule
15 12(b)(6) because, under both rules, a court must determine whether the facts
16 alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy.” *Pit
17 River Tribe v. Bureau of Land Mgmt.*, 793 F.3d 1147, 1155 (9th Cir. 2015)
18 (citation omitted).

19 Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may
20 move to dismiss the complaint for “failure to state a claim upon which relief can be

1 granted.” Fed. R. Civ. P. 12(b)(6). To survive dismissal, a plaintiff must allege
2 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
3 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
4 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This requires the plaintiff to
5 provide “more than labels and conclusions, and a formulaic recitation of the
6 elements.” *Twombly*, 550 U.S. at 555. When deciding, the court may consider the
7 plaintiff’s allegations and any “materials incorporated into the complaint by
8 reference.” *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1061
9 (9th Cir. 2008) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308,
10 322 (2007)). A plaintiff’s “allegations of material fact are taken as true and
11 construed in the light most favorable to the plaintiff[,]” but “conclusory allegations
12 of law and unwarranted inferences are insufficient to defeat a motion to dismiss for
13 failure to state a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir.
14 1996) (citation and brackets omitted).

15 Since the Complaint does not properly state a cause of action against either
16 Defendant and Plaintiff has not responded to the motion to dismiss, it appears
17 Plaintiff has abandoned his cause of action. The time to amend pleadings and add
18 parties has long passed. Discovery is closed. On the eve of trial, this motion to
19 dismiss—for judgment on the pleadings—was filed. The Plaintiff has left the
20 Court with no alternative but to dismiss.

1 **ACCORDINGLY, IT IS ORDERED:**


2 1. Defendants' Motion to Dismiss (ECF No.10) is **GRANTED**.

3 2. Plaintiff's Complaint is **DISMISSED** with prejudice.

4 The District Court Clerk is directed to enter this Order and Judgment for the
5 Defendants, provide copies to the parties and **close** the file.

6 **DATED June 28, 2019.**



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THOMAS O. RICE
Chief United States District Judge

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